

Law & critique: burkini, bikini and the female (un)dressed body

Article (Accepted Version)

Baldi, Giorgia (2018) Law & critique: burkini, bikini and the female (un)dressed body. Critical Legal Thinking [weblog article, 22 June 2018].

This version is available from Sussex Research Online: <http://sro.sussex.ac.uk/id/eprint/76709/>

This document is made available in accordance with publisher policies and may differ from the published version or from the version of record. If you wish to cite this item you are advised to consult the publisher's version. Please see the URL above for details on accessing the published version.

Copyright and reuse:

Sussex Research Online is a digital repository of the research output of the University.

Copyright and all moral rights to the version of the paper presented here belong to the individual author(s) and/or other copyright owners. To the extent reasonable and practicable, the material made available in SRO has been checked for eligibility before being made available.

Copies of full text items generally can be reproduced, displayed or performed and given to third parties in any format or medium for personal research or study, educational, or not-for-profit purposes without prior permission or charge, provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.

Burkini, Bikini and the female (un)dressed body: secularism, religion and western semiotics

In 2004, when Aheda Zanetti created the *burkini*, a swimsuit that covers the body leaving the face, hands and feet uncovered, its purpose was to increase Muslim women's agency by allowing them to enjoy sports and beach culture. She would never have imagined that her successful design would cause immense problems for the Muslim women who wore it. In 2016, fifteen French Riviera mayors decided to ban the *burkini* in the name of women's agency and French secular values.¹ Rudy Salles, Nice's deputy mayor, defined the *burkini* as a "provocation from Islamists" which "threat[ens] French identity", claiming that the ban aimed to liberate women while helping people "to be integrated [into] this society".² Immediately afterwards, in 2017, two British women were thrown out of a swimming pool in Portugal because they were wearing a *burkini*. The Portuguese staff member who asked the two ladies to leave stated that the *burkini* was not "acceptable for the pool" and that they "must wear a bikini to follow Portuguese culture."³ In the same year, the city of Geneva banned the *burkini* from swimming pools: the new law specifies the appropriate attire for women and requires them to wear "a one or two piece swimming costume that exposes their arms and does not come below the knee".⁴ However, while the *burkini* is seen as contradictory to western values and gender equality, other (similar) clothes are not. This has been highlighted by Izzedin Elzi, an Italian *Imam* who during the turmoil of the *burkini* affair posted in social media an image of veiled Catholic nuns enjoying the beach: following this

¹ Rachel Shabi 'Burkini Ban: New Wave of French "Mission Civilisatrice"' (*Al Jazeera*, 2016) <<http://www.aljazeera.com/indepth/opinion/2016/08/burkini-ban-wave-french-mission-civilatrice-160828110929500.html>> accessed 16 October 2016.

² *ibid.*

³ Isabelle Gerretsen, 'British women told to swap 'unacceptable' burkini for a bikini in Portugal' (*International Business Time*, 2017) <https://www.ibtimes.co.uk/family-told-swap-burkini-bikini-after-being-told-it-not-acceptable-portuguese-culture-1632905>

⁴ Harriet Agerholm, 'Burkini ban: Geneva says women must bare arms and legs', (*The Independent*, 2017) <https://www.independent.co.uk/news/world/europe/burkini-ban-geneva-bare-arms-legs-a8102701.html>

came images comparing women wearing the *burkini* with individuals wearing a diving swimsuit.⁵

The juxtaposition between similar covering clothes that differ not in form but in the meaning attributed to them reveals that particular attention should be paid to the semiotic of signs and how this works in the modern western/secular/liberal public space. However, the fixed meaning attributed to the practice of veiling and the *burkini* in contemporary Europe does not take into consideration the “affective and embodied practices through which a subject comes to relate to a particular sign”⁶ and naturalizes and defines the religious subject as an individual who simply submits him/herself to a set of recommendations based on general beliefs. Through the link between gender, religion, ethnicity and belonging, secular’s assumptions, encoded in western law, work as a marker of ‘citizenship’ and ‘racialized religious belonging’, which forms a specific law and religious subject. In this view, secularism emerges not as the separation between private and public, state and religion, but as the reconfiguration of religious practices and sensitivities in the public secular space through the control of the visible. This re-conceptualization is not neutral, as it endorses problematic assumptions not only about the proper place of religion and religious practices within secularized democracies but also about women’s freedom and their possibility of agency: this, in turn, discloses all the paradoxes of western/liberal/secular law.

The ‘*burkini* affair’ was played out around the contraposition between the ‘covered body’ as limited and constrained and the ‘naked body’ as free and ‘liberated’: the *burkini* and the bikini as representing the *measurement* of women’s freedom in contemporary Europe. While the ‘naked body’ seems to be at the core of the western notion of women’s freedom, Mahmood⁷ discloses a non-liberal concept of women’s freedom through the analysis of the relations between body, norms and the ethical subject of pious women in Egypt, for whom bodily practices are integral to the individual. Her study shows that while on the one hand secular rationality defines religion (and religious signs/practices) as a ‘private matter’, then on the other ‘pietist women’ disclose a performative/affective understanding of (religious) bodily practices and a different relation between body, ethics, and norms. While Mahmood’s work

⁵ ‘Imam protests burqini ban by posting image of nuns at the beach in full habits’ (*Women in the World*, 2016) <https://womenintheworld.com/2016/08/24/imam-protests-burqini-ban-by-posting-image-of-nuns-at-the-beach-in-full-habits/>

⁶ Saba Mahmood, ‘Religious Reason and Secular Affect: An Incommensurable Divide?’ (2009) 35 *Critical Inquiry* 836, 841–2.

⁷ Saba Mahmood, *Politics of Piety: The Islamic Revival and the Feminist Subject* / (Princeton University Press, 2005).

reveals a plurality of different ways to live and inhabit the relation between subject and object, ethics and body, the definition of the 'covered body' as a 'sign of' not only denies the very plurality of bodily practices, but it also discloses the extraordinary power of liberal/secular thought to define and universalize a specific Christian/liberal/secular rationale based on very specific concepts of religion and, along with it, of women's agency and freedom.⁸ These universal(ist) concepts are expressed in the contraposition between the *burkini* and the bikini, which discloses and makes possible a specific monolithic notion of women's freedom and un-freedom⁹ and, along with it, a specific conceptualization of the modern/secular religious subject. Notably, from an aesthetic point of view, there is no difference between a *burqini* and swimwear worn by divers, or Catholic nuns' clothes: this indicates that it is not the veil that renders women free or un-free, but the meanings attached to it. The power of the *burkini*, then, does not lie in the mere image of a covered body, but in the symbology attached to it.

The attempt by western politicians and judges to see veiling as a fixed and monolithic '*sign of*', not only fails to take into consideration the plurality of its meanings and the historical and cultural context within which certain practices, wills, and desires develop, but it also imposes a specific semiotic ideology on different cultures. Keane¹⁰ reveals how the western semiotic distinction between signifier and signified, object and subject, mirrors Calvinist and Protestant concerns to institute a separation between the transcendent world and the reality of this world. This distinction was imposed on other cultures by western missionaries and has become embedded in the secular idea of what it means to be modern and determines how images work in the liberal/secular world. Since in western semiotic ideology clothes are conceived as images¹¹ they are intended as a vehicle for meanings: they signify structures behind that which is represented,¹² irrespective of the modality of the subject/object relation. In the case, by defining the *burkini* as a 'sign', a fixed symbol of a monolithic culture in contrast to western secular democratic values, a duality between signifier and signified is

⁸ Nancy J Hirschmann, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton University Press 2009).

⁹ Saba Mahmood, 'Religious Freedom, the Minority Question, and Geopolitics in the Middle East' (2012) 54 *Comparative Studies in Society and History* 418.

¹⁰ Webb Keane, *Christian Moderns: Freedom and Fetish in the Mission Encounter* (University of California Press 2007).

¹¹ Peter Goodrich, 'Signs Taken for Wonders: Community, Identity, and A History of Sumptuary Law' (1998) 23 *Law & Social Inquiry* 707.

¹² Roland Barthes, *The Language of Fashion* (English ed, Berg, 2006).

implied as it is presumed that “the wearer’s act of displaying the sign [...] incorporates the actor’s will to display it – and therefore becomes part of what the headscarf meant.”¹³

The duality between signifier and signified, subject and object, is mirrored in the secular separation of private and public, state and religion, *forum internum* and *forum externum* (as the division between faith and manifestation made by article 9 of the European Convention of Human Rights on ‘Freedom of Thought, Conscience and Religion’). The distinction between *forum internum* and *forum externum*, signifier and signified, public and private, which has allowed the banning of the *burkini*, is not neutral as it presupposes a specific legal and religious subject, one who is able to separate its internal from its external being. In this view, legislation that bans the *burkini* has ‘authenticated’ and ‘legitimized’ not only the political discourse around the representation of the covered (Muslim) body, but also specific practices and understandings of religion and the religious subject. In this sense, religion is produced *through* law while Islam comes to be produced “by the power of state discourse – through the headscarf”.¹⁴

By defining the *burkini* as a fixed ‘symbol’ in contrast to liberal values of gender equality, the secular state defines the proper place of (alien) religion and religious practices in the ‘modern world’: it is exactly the act of defining veiling as a ‘sign’, a ‘symbol’ of something intrinsically ‘other’, that allows the marginalization of Islamic culture in the liberal/secular public sphere where different kinds of beach body covering are accepted but not the *burkini*. This reveals the paradoxes and limitations of liberal/secular thought as well as the inability of western/liberal democracies to accommodate different (non-Christian) subjectivities. Hence, secularism is not a neutral position as, inevitably, any exercise of civil power would favour one definition of ‘religion’ over others through a specific normative and semiotic understanding of religion and religious symbols. Secularism, then, defines and, at the same time, re-conceptualizes religion and religious sensitivities in the public sphere¹⁵ and, along with it, discloses a very specific idea of ‘womanhood’ and what constitutes the (female) body where hair, arms and legs are exposed. This act of signification has not only the power to ‘naturalize’ women’s desires as something ‘neutral’ to be defined by the state, but it also operates a detachment of the subject from its ‘object’: desire, in this context, becomes

¹³ Talal Asad, ‘French Secularism and the “Islamic Veil Affair”’ (2006) 8 *Hedgehog Review* 93, 97.

¹⁴ Suhraiya Jivraj, *The Religion of Law : Race, Citizenship and Children’s Belonging* / (Palgrave Macmillan, 2013) 38.

¹⁵ Mahmood, ‘Religious Reason and Secular Affect’ (n 7); Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford University Press 2003).

something neutral to be defined by the state, so the object of desire (the *burkini*) can now be defined as 'religious' or 'irreligious' rather than through a socio-psychological approach.¹⁶ Notably, by defining veiling as a 'sign of' the law allows a double movement which blurs the line between the public and private domains. In fact, on the one hand, by determining the meaning of specific symbols in advance, the rules of law form a specific Christian/liberal/secular citizen and its being, its desires, while on the other, by giving religious practices their proper place, it takes significant steps in limiting the personal freedom of Muslim women. It is through the teleological sovereign act of defining what religion and what are the 'proper' religious symbols to be protected by the law, that Muslim women in secular Europe have been un-veiled to be re-veiled with the mask of the western/secular/Christian subject of law and religion.

References

Agerholm H., 'Burkini ban: Geneva says women must bare arms and legs', (*The Independent*, 2017) <https://www.independent.co.uk/news/world/europe/burkini-ban-geneva-bare-arms-legs-a8102701.html>

Asad T, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford University Press 2003)

——, 'French Secularism and the "Islamic Veil Affair"' (2006) 8 *Hedgehog Review* 93

-----, 'Trying to Understand French Secularism', *Political Theologies: Public Religions in a Post-Secular World* (Hent de Vries and Lawrence E Sullivan, Fordham University Press 2006)

Baldi G, "'Burqa Avenger': Law and Religious Practices in Secular Space' (2018) 29 *Law and Critique* 31

Barthes R, *The Language of Fashion* / (English ed, Berg, 2006)

Diamantides M, 'Constitutional Theory and Its Limits—Reflections on Comparative Political Theologies' [2012] *Law, Culture and the Humanities* 1743872112437683

Gerretsen I., 'British women told to swap 'unacceptable' burkini for a bikini in Portugal' (*International Business Time*, 2017) <https://www.ibtimes.co.uk/family-told-swap-burkini-bikini-after-being-told-it-not-acceptable-portuguese-culture-1632905>

Goodrich P, 'Signs Taken for Wonders: Community, Identity, and A History of Sumptuary Law' (1998) 23 *Law & Social Inquiry* 707

Hirschmann NJ, *The Subject of Liberty: Toward a Feminist Theory of Freedom* (Princeton University Press 2009)

¹⁶ Talal Asad, 'Trying to Understand French Secularism', *Political Theologies: Public Religions in a Post-Secular World* (Hent de Vries and Lawrence E Sullivan, Fordham University Press 2006).

'Imam protests burqini ban by posting image of nuns at the beach in full habits' (*Women in the World*, 2016) <https://womenintheworld.com/2016/08/24/imam-protests-burqini-ban-by-posting-image-of-nuns-at-the-beach-in-full-habits/>

Jivraj S, *The Religion of Law : Race, Citizenship and Children's Belonging* / (Palgrave Macmillan, 2013)

Keane W, *Christian Moderns: Freedom and Fetish in the Mission Encounter* (University of California Press 2007)

Mahmood S, *Politics of Piety : The Islamic Revival and the Feminist Subject* / (Princeton University Press, 2005)

——, 'Religious Reason and Secular Affect: An Incommensurable Divide?' (2009) 35 *Critical Inquiry* 836

——, 'Religious Freedom, the Minority Question, and Geopolitics in the Middle East' (2012) 54 *Comparative Studies in Society and History* 418

Shabi R., 'Burkini Ban: New Wave of French "Mission Civilisatrice"' (*Al Jazeera*, 2016) <<http://www.aljazeera.com/indepth/opinion/2016/08/burkini-ban-wave-french-mission-civilatrice-160828110929500.html>> accessed 16 October 2016.